APPEAL NO. 021967
FILED SEPTEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 26, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the appellant (self-insured) did not contest compensability in accordance with Section 409.021; and that the self-insured's contest is not based on newly discovered evidence that could not reasonably have been discovered at an earlier date. The self-insured appealed the hearing officer's injury determination. The self-insured also appealed the determination that it did not contest compensability and that the contest was not based on newly discovered evidence. The file does not contain a response from the claimant.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. Whether the claimant sustained a compensable injury is a factual determination for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence, as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

The hearing officer did not err in determining that the self-insured did not contest compensability in accordance with Section 409.021, and that the self-insured's contest is not based on newly discovered evidence that could not reasonably have been discovered at an earlier date. Section 409.021(d), provides that an insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier. Whether due diligence is shown in contesting compensability upon the discovery of new evidence or whether the evidence could have reasonably been discovered earlier are questions of fact for the hearing officer to determine. See Texas Workers' Compensation Commission Appeal No. 92218, decided July 15, 1992. Cain, *supra;* King, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

RE
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Veronica Lopez
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Susan M. Kelley
Appeals Judge